



ORG:ENG.

Before:

Judge Yakov A. Ostrovsky

Registry:

Ms. Prisca Nyambe

Dr. Antoine Mindua

THE PROSECUTOR
versus
BERNARD NTUYAHAGA

Case No. ICTR-98-40-I

DECISION ON THE REVIEW OF THE INDICTMENT

For the Prosecutor:

Mr. Matar Diop

Ms. Josee D'Aoust

Mr. Robert Petit

The International Criminal Tribunal for Rwanda (the "Tribunal"),

SITTING AS Judge Yakov A. Ostrovsky, designated by President of the Tribunal under Rule 28 of the Rules of Procedure and Evidence ("the Rules");

CONSIDERING the order by President Laity Kama, on 8 July 1998, for the transfer and provisional detention of the accused, Bernard Ntuyahaga, from the United Republic of Tanzania, to the United Nations Detention Facility;

CONSIDERING FURTHER the decision rendered on 8 September 1998, for the extension of the accused's provisional detention under Rule 40 *bis* of the Rules by Judge Lennart Aspegren;

UPON RECEIVING from the Prosecutor, on 29 June 1998, an indictment, pursuant to Articles 17 and 18 of the Statute of The Tribunal ("the Statute"), and Rule 47 of the Rules charging Bernard Ntuyahaga with conspiracy to commit genocide, genocide, complicity in genocide, crimes against humanity and violations of Article 3 Common to the Geneva Conventions and Additional Protocol II;

HAVING HEARD the Prosecutor, on 29 September 1998, pursuant to Rule 47(D) of the Rules to review the indictment; during which the Tribunal requested the Prosecutor to present additional materials in support of counts 1, 2, and 4, pursuant to Rule 47(F)(i) of the Rules;

TAKING INTO ACCOUNT the Prosecutor's response that she lacked sufficient time to provide the Tribunal with the requested materials, due to the expiration of the accused's provisional detention at midnight on 29 September 1998;

THUS RULING, that under such circumstances there is insufficient basis in the material presented to Tribunal to sustain the allegations in counts 1, 2, and 4;

WHEREAS the Tribunal is convinced that a *prima facie* case has been established with regard to the charges of crimes against humanity, as set forth in the indictment, pursuant to Article 18(1) of the Statute in counts 3 and 5, but finds that the two counts should be joined;

HEREBY:

DISMISSES counts 1, 2 and 4 of the indictment.

ORDERS the Prosecutor to join count 5 with count 3.

CONFIRMS count 3 of the indictment, against Bernard Ntuyahaga.

TAKES NOTE of the Prosecutor's prayer that a warrant of arrest and order for continued detention be issued against Bernard Ntuyahaga, who is presently detained in the United Nations Detention Facilities, in Arusha;

ORDERS, after consultation with the Prosecutor, that there be no public disclosure of the supporting documentation submitted with the indictment, pursuant to Rule 53(B) of the Rules until the indictment has been served on the accused.

Arusha, 29 September 1998

Yakov A. Ostrovsky
Judge

Seal of the Tribunal